

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

GARY E. HILL

§

v.

§

CIVIL ACTION NO. 9:06cv60

COMMISSIONER, SSA

§

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this action, has been presented for consideration. The Report and Recommendation recommends that Defendant's Motion to Dismiss (document #11) be granted and that the complaint be dismissed. Plaintiff filed written objections to the Report and Recommendation on June 9, 2006. Plaintiff also filed two untimely responses to the motion to dismiss on June 1, 2006 and June 9, 2006.

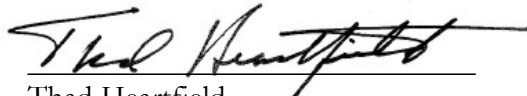
Having made a *de novo* review of the objections filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct and the objections are without merit. Plaintiff did not commence this lawsuit within the sixty day statutory limitation period. In this case, the ALJ issued his decision on July 23, 2003 and the Office of Hearings and

Appeals issued its decision on December 12, 2003.¹ Plaintiff did not file this lawsuit until more than two years later, on March 3, 2006. Out of an abundance of caution, however, only for purposes of reviewing the motion to dismiss, the Magistrate Judge analyzed Plaintiff's time period for filing this lawsuit as if the Appeals Council decision was mailed on December 12, 2005 because the year is not legible on the "Notice of Appeals Council Action." Even using that date, Plaintiff did not file his lawsuit within sixty days of the presumed date of receipt² and he has not made a reasonable showing to the contrary. The findings and conclusions of the Magistrate Judge are therefore adopted as those of the Court.

In light of the foregoing, it is

ORDERED that the Defendant's Motion to Dismiss (document #11) is **GRANTED** and the complaint is hereby **DISMISSED**. Any motion not previously ruled on is **DENIED**.

SIGNED this the 19 day of June, 2006.


Thad Heartfield
United States District Judge

¹This date is established by a Declaration of John J. Timlin from the Office of Hearings and Appeals that is attached as an exhibit to Defendant's Motion to Dismiss.

²A civil action is to be commenced within sixty days after the notice is received. 20 C.F.R. § 422.210(c). There is a rebuttable presumption that the date of receipt is five days after the date of the notice. *Id.*